

STAT

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25 August 1983  
OLL: 83-2059

MEMORANDUM FOR THE RECORD

SUBJECT: Sensitive Compartmented Information (SCI) Nondisclosure Agreement

After being informed by Mr. Richard Willard, Deputy Assistant Attorney General/DoJ, that he was going to have a press conference on the release of the SCI Nondisclosure Agreement pursuant to National Security Decision Directive (NSDD) 84 and upon agreement with [ ] OGC, STAT I arranged to brief our Committees of the issuance. Consequently, I informed Tom Latimer of the HPSCI and, in the absence of Rob Simmons and Vicki Toensing, Gary Schmitt and Peter Sullivan of the SSCI and arranged to have copies delivered to each Committee.

[ ] STAT  
Deputy Director, Office of Legislative Liaison

Attachment

Distribution:			
Original - OLL Subject	w/att.	1-ICS [ ]	STAT
1 - OLL Chrono	w/o att.		
1 - D/OLL	w/att.		
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DD/OLL: [ ] (25 Aug 1983)			STAT



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*Washington, D.C. 20530*

**August 25, 1983**

**Materials Concerning Prepublication Review**

- 1) **SCI Nondisclosure Agreement Form**
- 2) **Classified Information Nondisclosure Agreement Form**
- 3) **DOJ Letters on Enforceability of Agreements**
- 4) **DOJ Implementing Regulations**

## SENSITIVE COMPARTMENTED INFORMATION NONDISCLOSURE AGREEMENT

An Agreement Between \_\_\_\_\_ and the United States  
(Name-Printed or Typed)

- 1 1. Intending to be legally bound, I hereby accept the obligations  
2 contained in this Agreement in consideration of my being granted  
3 access to information known as Sensitive Compartmented Information  
4 (SCI). I have been advised and am aware that SCI involves or  
5 derives from intelligence sources or methods and is classified or  
6 classifiable under the standards of Executive Order 12356 or under  
7 other Executive order or statute. I understand and accept that by  
8 being granted access to SCI, special confidence and trust shall be  
9 placed in me by the United States Government.
- 1 2. I hereby acknowledge that I have received a security indoctrination  
2 concerning the nature and protection of SCI, including the procedures  
3 to be followed in ascertaining whether other persons to whom I  
4 contemplate disclosing this information have been approved for  
5 access to it, and that I understand these procedures. I understand that  
6 I may be required to sign subsequent agreements as a condition of  
7 being granted access to different categories of SCI. I further  
8 understand that all my obligations under this Agreement continue to  
9 exist whether or not I am required to sign such subsequent agreements.
- 1 3. I have been advised and am aware that direct or indirect unauthorized  
2 disclosure, unauthorized retention, or negligent handling of SCI by  
3 me could cause irreparable injury to the United States or could be  
4 used to advantage by a foreign nation. I hereby agree that I will  
5 never divulge such information unless I have officially verified  
6 that the recipient has been properly authorized by the United States  
7 Government to receive it or I have been given prior written notice of  
8 authorization from the United States Government Department or Agency  
9 (hereinafter Department or Agency) last granting me either a security  
10 clearance or an SCI access approval that such disclosure is permitted.
- 1 4. I further understand that I am obligated to comply with laws and  
2 regulations that prohibit the unauthorized disclosure of classified  
3 information. As used in this Agreement, classified information is  
4 information that is classified under the standards of E.O. 12356, or  
5 under any other Executive order or statute that prohibits the  
6 unauthorized disclosure of information in the interest of national  
7 security.
- 1 5. In consideration of being granted access to SCI and of being  
2 assigned or retained in a position of special confidence and trust  
3 requiring access to SCI and other classified information, I hereby  
4 agree to submit for security review by the Department or Agency  
5 last granting me either a security clearance or an SCI access  
6 approval all materials, including works of fiction, that I contemplate  
7 disclosing to any person not authorized to have such information,

8 or that I have prepared for public disclosure, which contain or  
9 purport to contain:

- 10 (a) any SCI, any description of activities that produce or
- 11 relate to SCI, or any information derived from SCI;
- 12 (b) any classified information from intelligence reports
- 13 or estimates; or
- 14 (c) any information concerning intelligence activities,
- 15 sources or methods.

16 I understand and agree that my obligation to submit such information  
17 and materials for review applies during the course of my access to  
18 SCI and at all times thereafter. However, I am not required to  
19 submit for review any such materials that exclusively contain  
20 information lawfully obtained by me at a time when I have no employment,  
21 contract or other relationship with the United States Government,  
22 and which are to be published at such time.

1 6. I agree to make the submissions described in paragraph 5 prior  
2 to discussing the information or materials with, or showing them to  
3 anyone who is not authorized to have access to such information. I  
4 further agree that I will not disclose such information or materials  
5 unless I have officially verified that the recipient has been  
6 properly authorized by the United States Government to receive it or  
7 I have been given written authorization from the Department or  
8 Agency last granting me either a security clearance or an SCI  
9 access approval that such disclosure is permitted.

1 7. I understand that the purpose of the review described in paragraph 5  
2 is to give the United States a reasonable opportunity to determine  
3 whether the information or materials submitted pursuant to paragraph 5  
4 set forth any SCI or other information that is subject to classification  
5 under E.O. 12356 or under any other Executive order or statute that  
6 prohibits the unauthorized disclosure of information in the interest  
7 of national security. I further understand that the Department or  
8 Agency to which I have submitted materials will act upon them,  
9 coordinating with the Intelligence Community or other agencies when  
10 appropriate, and substantively respond to me within 30 working days  
11 from date of receipt.

1 8. I have been advised and am aware that any breach of this Agreement  
2 may result in the termination of any security clearances and SCI  
3 access approvals that I may hold; removal from any position of  
4 special confidence and trust requiring such clearances or access  
5 approvals; and the termination of my employment or other relationships  
6 with the Departments or Agencies that granted my security clearances  
7 or SCI access approvals. In addition, I have been advised and am  
8 aware that any unauthorized disclosure of SCI or other classified  
9 information by me may constitute a violation or violations of United  
10 States criminal laws, including the provisions of Sections 641, 793,  
11 794, 798, and 952, Title 18, United States Code, the provisions

12 of Section 783(b), Title 50, United States Code, and the provisions  
13 of the Intelligence Identities Protection Act of 1982. I recognize  
14 that nothing in this Agreement constitutes a waiver by the United  
15 States of the right to prosecute me for any statutory violation.

1 9. I hereby assign to the United States Government all royalties,  
2 remunerations, and emoluments that have resulted, will result, or  
3 may result from any disclosure, publication, or revelation not  
4 consistent with the terms of this Agreement.

1 10. I understand that the United States Government may seek any  
2 remedy available to it to enforce this Agreement including, but not  
3 limited to, application for a court order prohibiting disclosure of  
4 information in breach of this Agreement.

1 11. I understand that all information to which I may obtain access  
2 by signing this Agreement is now and will forever remain the property  
3 of the United States Government. I do not now, nor will I ever,  
4 possess any right, interest, title, or claim whatsoever to such  
5 information. I agree that I shall return all materials which have  
6 or may come into my possession or for which I am responsible  
7 because of such access, upon demand by an authorized representative  
8 of the United States Government or upon the conclusion of my employment  
9 or other relationship with the Department or Agency that last  
10 granted me either a security clearance or an SCI access approval.  
11 If I do not return such materials upon request, I understand that  
12 this may be a violation of Section 793, Title 18, United States  
13 Code, a United States criminal law.

1 12. Unless and until I am released in writing by an authorized  
2 representative of the United States Government, I understand that  
3 all conditions and obligations imposed upon me by this Agreement  
4 apply during the time I am granted access to SCI and at all times  
5 thereafter.

1 13. Each provision of this Agreement is severable. If a court should  
2 find any provision of this Agreement to be unenforceable, all other  
3 provisions of this Agreement shall remain in full force and effect.

1 14. I have read this Agreement carefully and my questions, if any,  
2 have been answered to my satisfaction. I acknowledge that the  
3 briefing officer has made available to me Sections 641, 793, 794,  
4 798, and 952 of Title 18, United States Code, Section 783(b) of  
5 Title 50, United States Code, the Intelligence Identities Protection  
6 Act of 1982, and Executive Order 12356 so that I may read them at  
7 this time, if I so choose.

1 15. I make this Agreement without mental reservation or purpose of  
2 evasion.

\_\_\_\_\_  
SIGNATURE\_\_\_\_\_  
DATE\_\_\_\_\_  
SOCIAL SECURITY NUMBER  
(SEE NOTICE BELOW)\_\_\_\_\_  
ORGANIZATION

- 1 The execution of this Agreement was witnessed by the undersigned,
- 2 who, on behalf of the United States Government, agreed to its terms
- 3 and accepted it as a prior condition of authorizing access to
- 4 Sensitive Compartmented Information.

WITNESS and ACCEPTANCE:

\_\_\_\_\_  
SIGNATURE\_\_\_\_\_  
DATE\_\_\_\_\_  
ORGANIZATION

## SECURITY BRIEFING ACKNOWLEDGEMENT

I hereby acknowledge that I was briefed on the following SCI Special Access Program(s):

\_\_\_\_\_  
(Special Access Programs by Initials Only)\_\_\_\_\_  
Signature of Individual Briefed\_\_\_\_\_  
Date Briefed\_\_\_\_\_  
Printed or Typed Name\_\_\_\_\_  
Social Security Number (See Notice  
Below)\_\_\_\_\_  
Organization (Name and Address)

I certify that the above SCI access(es) were approved in accordance with relevant SCI procedures and that the briefing presented by me on the above date was also in accordance therewith.

\_\_\_\_\_  
Signature of Briefing Officer\_\_\_\_\_  
Printed or Typed Name\_\_\_\_\_  
Organization (Name and Address)\_\_\_\_\_  
Social Security Number (See Notice  
Below)

## SECURITY DEBRIEFING ACKNOWLEDGEMENT

Having been reminded of my continuing obligation to comply with the terms of this Agreement, I hereby acknowledge that I was debriefed on the following SCI Special Access Program(s):

\_\_\_\_\_  
(Special Access Programs by Initials Only)

\_\_\_\_\_  
Signature of Individual Debriefed

\_\_\_\_\_  
Date Debriefed

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Social Security Number (See Notice Below)

\_\_\_\_\_  
Organization (Name and Address)

I certify that the debriefing presented by me on the above date was in accordance with relevant SCI procedures.

\_\_\_\_\_  
Signature of Debriefing Officer

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Organization (Name and Address)

\_\_\_\_\_  
Social Security Number (See Notice Below)

- 1 NOTICE: The Privacy Act, 5 U.S.C. 552a, requires that federal
- 2 agencies inform individuals, at the time information is solicited
- 3 from them, whether the disclosure is mandatory or voluntary, by
- 4 what authority such information is solicited, and what uses will
- 5 be made of the information. You are hereby advised that authority
- 6 for soliciting your Social Security Account Number (SSN) is Executive
- 7 Order 9397. Your SSN will be used to identify you precisely when
- 8 it is necessary to 1) certify that you have access to the information
- 9 indicated above, 2) determine that your access to the information
- 10 indicated has terminated, or 3) certify that you have witnessed
- 11 a briefing or debriefing. Although disclosure of your SSN is not
- 12 mandatory, your failure to do so may impede the processing of such
- 13 certifications or determinations.



## CLASSIFIED INFORMATION NONDISCLOSURE AGREEMENT

An Agreement Between \_\_\_\_\_ and the United States  
(Name-Printed or Typed)

1 1. Intending to be legally bound, I hereby accept the obligations  
2 contained in this Agreement in consideration of my being granted  
3 access to classified information. As used in this Agreement, classified  
4 information is information that is either classified or classifiable  
5 under the standards of Executive Order 12356, or under any other Executive  
6 order or statute that prohibits the unauthorized disclosure of information  
7 in the interest of national security. I understand and accept that  
8 by being granted access to classified information, special confidence  
9 and trust shall be placed in me by the United States Government.

1 2. I hereby acknowledge that I have received a security indoctrination  
2 concerning the nature and protection of classified information,  
3 including the procedures to be followed in ascertaining whether  
4 other persons to whom I contemplate disclosing this information have  
5 been approved for access to it, and that I understand these procedures.

1 3. I have been advised and am aware that direct or indirect unauthorized  
2 disclosure, unauthorized retention, or negligent handling of classified  
3 information by me could cause irreparable injury to the United States  
4 or could be used to advantage by a foreign nation. I hereby agree  
5 that I will never divulge such information unless I have officially  
6 verified that the recipient has been properly authorized by the  
7 United States Government to receive it or I have been given prior  
8 written notice of authorization from the United States Government  
9 Department or Agency (hereinafter Department or Agency) last granting  
10 me a security clearance that such disclosure is permitted. I  
11 further understand that I am obligated to comply with laws and  
12 regulations that prohibit the unauthorized disclosure of classified  
13 information.

1 4. I have been advised and am aware that any breach of this Agreement  
2 may result in the termination of any security clearances I hold; removal  
3 from any position of special confidence and trust requiring such  
4 clearances; and the termination of my employment or other relationships  
5 with the Departments or Agencies that granted my security clearance or  
6 clearances. In addition, I have been advised and am aware that any  
7 unauthorized disclosure of classified information by me may constitute  
8 a violation or violations of United States criminal laws, including  
9 the provisions of Sections 641, 793, 794, 798, and 952, Title 18,  
10 United States Code, the provisions of Section 783(b), Title 50,  
11 United States Code, and the provisions of the Intelligence Identities  
12 Protection Act of 1982. I recognize that nothing in this Agreement  
13 constitutes a waiver by the United States of the right to prosecute  
14 me for any statutory violation.

1 5. I hereby assign to the United States Government all royalties,  
2 remunerations, and emoluments that have resulted, will result or may  
3 result from any disclosure, publication, or revelation not consistent  
4 with the terms of this Agreement.

1 6. I understand that the United States Government may seek any  
2 remedy available to it to enforce this Agreement including, but  
3 not limited to, application for a court order prohibiting disclosure  
4 of information in breach of this Agreement.

1 7. I understand that all information to which I may obtain access  
2 by signing this Agreement is now and will forever remain the property  
3 of the United States Government. I do not now, nor will I ever,  
4 possess any right, interest, title, or claim whatsoever to such  
5 information. I agree that I shall return all materials, which have,  
6 or may have, come into my possession or for which I am responsible  
7 because of such access, upon demand by an authorized representative  
8 of the United States Government or upon the conclusion of my employment  
9 or other relationship with the Department or Agency that last  
10 granted me a security clearance. If I do not return such materials  
11 upon request, I understand that this may be a violation of Section 793,  
12 Title 18, United States Code, a United States criminal law.

1 8. Unless and until I am released in writing by an authorized  
2 representative of the United States Government, I understand that  
3 all conditions and obligations imposed upon me by this Agreement  
4 apply during the time I am granted access to classified information,  
5 and at all times thereafter.

1 9. Each provision of this Agreement is severable. If a court  
2 should find any provision of this Agreement to be unenforceable, all  
3 other provisions of this Agreement shall remain in full force and  
4 effect.

1 10. I have read this Agreement carefully and my questions, if  
2 any, have been answered to my satisfaction. I acknowledge that  
3 the briefing officer has made available to me Sections 641, 793,  
4 794, 798, and 952 of Title 18, United States Code, Section 783(b) of  
5 Title 50, United States Code, the Intelligence Identities Protection  
6 Act of 1982, and Executive Order 12356, so that I may read them  
7 at this time, if I so choose.

1 11. I make this Agreement without mental reservation or purpose  
2 of evasion.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SOCIAL SECURITY NUMBER  
(SEE NOTICE BELOW)

\_\_\_\_\_  
ORGANIZATION

JUN 4 1983

- 1 The execution of this Agreement was witnessed by the undersigned,
- 2 who, on behalf of the United States Government, agreed to its terms
- 3 and accepted it as a prior condition of authorizing access to
- 4 classified information.

WITNESS and ACCEPTANCE:

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
ORGANIZATION

- 1 NOTICE: The Privacy Act, 5 U.S.C. 552a, requires that federal
- 2 agencies inform individuals, at the time information is solicited
- 3 from them, whether the disclosure is mandatory or voluntary, by what
- 4 authority such information is solicited, and what uses will be made
- 5 of the information. You are hereby advised that authority for
- 6 soliciting your Social Security Account Number (SSN) is Executive
- 7 Order 9397. Your SSN will be used to identify you precisely when it
- 8 is necessary to 1) certify that you have access to the information
- 9 indicated above or 2) determine that your access to the information
- 10 indicated has terminated. Although disclosure of your SSN is not
- 11 mandatory, your failure to do so may impede the processing of such
- 12 certifications or determinations.



**U.S. Department of Justice**

**Civil Division**

Deputy Assistant Attorney General

Washington, D.C. 20530

August 16, 1983

Mr. Robert M. Kimmitt  
Executive Secretary  
National Security Council  
The White House  
Washington, D. C. 20506

Re: NSDD-84 Nondisclosure Agreement Forms

Dear Mr. Kimmitt:

In my letter of July 19, 1983, a copy of which is attached, I advised Steven Garfinkel that two draft nondisclosure agreements had been determined by the Department of Justice to be enforceable in civil litigation brought by the United States. Since then, the nondisclosure agreements have been revised, and copies of the final versions are attached to this letter. None of the revisions affect any of the legal analysis contained in my July 19 letter. Therefore, we have concluded that each of the final nondisclosure agreements would be enforceable in accordance with its terms in civil litigation initiated by the United States.

Sincerely,

(Signed)

Richard K. Willard

Richard K. Willard  
Deputy Assistant Attorney General

Attachments

cc: Steven Garfinkel



## U.S. Department of Justice

Civil Division

Deputy Assistant Attorney General

Washington, D.C. 20530

July 19, 1983

Mr. Steven Garfinkel  
Director, Information Security Oversight Office  
General Services Administration  
Washington, D.C. 20403

Dear Mr. Garfinkel:

Your letter to the Attorney General dated July 1, 1983, requests that the Department of Justice review two nondisclosure agreements drafted pursuant to National Security Decision Directive 84, entitled "Safeguarding National Security Information" (referred to herein as NSDD-84), which was signed by the President on March 11, 1983.

Paragraph 1.a. of NSDD-84 requires all persons with authorized access to classified information to sign a nondisclosure agreement as a condition of access. Paragraph 1.b. imposes the same requirement on persons with authorized access to Sensitive Compartmented Information (SCI) and requires, in addition, that such nondisclosure agreements "include a provision for prepublication review to assure deletion of SCI and other classified information." Paragraph 1.c. provides that the agreements required in paragraphs 1.a. and 1.b. must be in a form determined by the Department of Justice to be enforceable in a civil action brought by the United States.

We understand that the draft agreements transmitted with your letter were prepared pursuant to the provision in paragraph 1.c. of NSDD-84 that your office develop standardized forms to satisfy the requirements of the directive. We also understand that use of these forms will be mandatory for each agency of the Executive Branch that originates or handles classified information, unless the National Security Council grants permission to use an alternative form of agreement that has been approved by your office and the Justice Department.

Classified Information Nondisclosure Agreement

The essence of the proposed Classified Information Nondisclosure Agreement is an undertaking by the person receiving access to classified information never to disclose such

-2-

information in an unauthorized manner. This undertaking is consistent with the provisions of Executive Order 12356, as well as various statutes and other regulations that prohibit the unauthorized disclosure of classified information. In addition, government employees and others who are entrusted with classified information have a fiduciary obligation to protect it from unauthorized disclosure. See Snepp v. United States, 444 U.S. 507, 511 n.6, 515 n.11 (1980).

The protection of national security information is a primary and fundamental constitutional responsibility of the President that derives from his responsibilities as Chief Executive, Commander-in-Chief, and the principal instrument of United States foreign policy. Agreements to preserve the secrecy of classified information are an appropriate method for the President to discharge these constitutional responsibilities. United States v. Marchetti, 466 F.2d 1309, 1315-16 (4th Cir.), cert. denied, 409 U.S. 1063 (1972); cf. Snepp v. United States, supra, 444 U.S. at 509 n.3 (agreement serves "compelling interest" of Government in safeguarding national security information). These same cases also rely upon the statutory authority of the Director of Central Intelligence to protect "intelligence sources and methods from unauthorized disclosure." 50 U.S.C. § 403(d)(3). However, the agreements sustained in Marchetti and Snepp were not limited to information concerning intelligence sources and methods but included promises never to disclose any classified information. Therefore, we believe that the President may require the signing of such agreements as a condition of access to classified information.

#### SCI Nondisclosure Agreement

The proposed SCI Nondisclosure Agreement has the same basic terms as the Classified Information Nondisclosure Agreement discussed above. SCI is a category of classified information that is subject to special access and handling requirements because it involves or derives from particularly sensitive intelligence sources and methods. The power to require signing such an agreement as a condition of access to SCI is thus supported by the statutory authority of the Director of Central Intelligence to protect intelligence sources and methods, 50 U.S.C. § 403(d)(3), as well as the more fundamental constitutional responsibilities of the President regarding national security.

-3-

The proposed SCI Nondisclosure Agreement includes provisions for the Government to conduct prepublication review of certain writings by persons who have signed the agreement. The prepublication review provisions of the proposed agreement are similar to the agreement found by the Supreme Court to be enforceable in Snepp v. United States, supra. See also Alfred A. Knopf, Inc. v. Colby, 509 F.2d 1362 (4th Cir.), cert. denied, 421 U.S. 992 (1975); United States v. Marchetti, supra; Agee v. CIA, 500 F. Supp. 506 (D.D.C. 1980).

The rationale of the above-cited cases supports the inclusion of prepublication review provisions in agreements that extend beyond CIA to include other persons with authorized access to SCI. Neither the statutory authority of the Director of Central Intelligence nor the constitutional responsibilities of the President are limited to CIA and its employees. Moreover, a high degree of trust, which creates a fiduciary obligation on the part of CIA employees, would also be involved for government officials outside CIA who are entrusted with equally sensitive information such as SCI.

Paragraph 5 of the proposed SCI Nondisclosure Agreement defines the scope of materials required to be submitted for prepublication review. In certain respects, this provision is narrower than the agreement at issue in Snepp. As in the Snepp agreement, however, certain materials must be submitted for review even if they are not thought to contain classified information. The Supreme Court in Snepp upheld the validity of such a requirement. 444 U.S. at 511-13.

Among the categories of materials required in paragraph 5 to be submitted for prepublication review is "(c) any information concerning intelligence activities, sources or methods." This category is not limited to classified information as such, but includes any information that is required to be considered for classification pursuant to Executive Order 12356, § 1.3(a)(4). We believe that agencies using the proposed SCI Nondisclosure Agreement should include in their implementing instructions some definition of the term "intelligence activities," to include at least a reference to the definition contained in Executive Order 12333, § 3.4(e).

Once material is submitted for prepublication review, there is no authority in the proposed agreement for the Government to delete unclassified information. However, any information that is

-4-

subject to classification may be deleted pursuant to paragraph 7, even if it does not pertain to SCI or other intelligence matters. See Alfred A. Knopf, Inc. v. Colby, supra, 509 F.2d at 1368-69.

Conclusion

We have reviewed the specific provisions of the two draft agreements transmitted with your letter and have concluded that each would be enforceable in accordance with its terms in civil litigation initiated by the United States.

Sincerely,

(Signed)

Richard K. Willard

Richard K. Willard

Deputy Assistant Attorney General



**DEPARTMENT  
OF JUSTICE**

**Order**

DOJ 2620.8

**Subject:** EMPLOYEE OBLIGATIONS TO PROTECT CLASSIFIED INFORMATION  
AND SUBMIT TO PREPUBLICATION REVIEW

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1. PURPOSE. The purpose of this order is to explain and clarify Department of Justice (DOJ) policies concerning implementation of the prepublication review program.
2. SCOPE. This order applies to all persons granted access to classified information in the course of their employment at the DOJ and DOJ contractors granted such access.
3. AUTHORITY.
  - a. Executive Order 12356, "National Security Information."
  - b. National Security Decision Directive-84 entitled "Safeguarding National Security Information."
  - c. 28 C.F.R. 0.75(p).
4. POLICY. All persons granted access to classified information in the course of their employment at the DOJ are required to safeguard that information from unauthorized disclosure. This nondisclosure obligation is imposed by statutes, regulations, access agreements, and the fiduciary relationships of the persons who are entrusted with classified information in the performance of their duties. The nondisclosure obligation continues after DOJ employment terminates.

As an additional means of preventing unlawful disclosures of classified information, the President has directed that all persons with authorized access to Sensitive Compartmented Information (SCI) be required to sign nondisclosure agreements containing a provision for prepublication review to assure deletion of SCI and other classified information. SCI is information that not only is classified for national security reasons as Top Secret, Secret, or Confidential, but also is subject to special access and handling requirements

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**Distribution:** BUR/H-1  
OBD/F-2 OBD/H-1

**Initiated By:** Security Staff  
Justice Management Division

DOJ 2620.8

because it involves or derives from particularly sensitive intelligence sources and methods.

5. RESPONSIBILITIES.

- a. The prepublication review provision requires that DOJ employees granted access to SCI submit certain material to the Department, whether prepared during or subsequent to DOJ employment, prior to its publication to provide an opportunity for determining whether an unauthorized disclosure of SCI or other classified information would occur as a consequence of its publication.

The obligations not to disclose classified information and to comply with agreements requiring prepublication review have been held by the Supreme Court to be enforceable in civil litigation. Snepp v. United States, 444 U.S. 507 (1980).

- b. It must be recognized at the outset that it is not possible to anticipate each and every question that may arise. The Department will endeavor to respond, however, as quickly as possible to specific inquiries by present and former employees concerning whether specific materials require prepublication review. Present and former employees are invited to discuss their plans for public disclosures of information that may be subject to these obligations with authorized Department representatives at an early stage, or as soon as circumstances indicate these policies must be considered. All questions concerning these obligations should be addressed to the Counsel for Intelligence Policy, Office of Intelligence Policy and Review, Room 6325, U.S. Department of Justice, 10th & Constitution Avenue, N.W., Washington, D.C. 20530. The official views of the Department on whether specific materials require prepublication review may only be expressed by the Counsel for Intelligence Policy and persons should not act in reliance upon the views of other Department personnel.
- c. Employees with access to SCI will be required to sign agreements providing for prepublication review. Prepublication review is required only as expressly provided for in an agreement. However, all persons who have had access to classified information have an obligation to avoid unauthorized disclosures of such information and are subject to enforcement actions if they disclose classified information in an unauthorized manner. Therefore, present or former employees are encouraged voluntarily to submit material for

prepublication review if they believe that such material may contain classified information even if such submission is not required by a prepublication review agreement. Where there is any doubt, present and former employees are urged to err on the side of prepublication review to avoid unauthorized disclosures and for their own protection.

- d. Present or former employees who have signed agreements providing for prepublication review are required to submit any material prepared for disclosure to others that contains or purports to contain:

- (1) any SCI, any description of activities that produce or relate to SCI, or any information derived from SCI;
- (2) any classified information from intelligence reports or estimates; or
- (3) any information concerning intelligence activities, sources or methods.

The term "intelligence activities" in paragraph 5.d.(3) means all activities that agencies within the Intelligence Community are authorized to conduct pursuant to Executive Order 12333. However, there is no requirement to submit for review any materials that exclusively contain information lawfully obtained at a time when the author has no employment, contract, or other relationship with the United States Government and which are to be published at such time.

- e. A person's obligation to submit material for prepublication review remains identical whether such person actually prepares the material or causes or assists another person, such as a ghost writer, spouse or friend, or editor in preparing the material. Material described in paragraph 5.d must be submitted for prepublication review prior to discussing it with or showing it to a publisher, co-author, or any other person who is not authorized to have access to it. In this regard, it should be noted that a failure to submit such material for prepublication review constitutes a breach of the obligation and exposes the author to remedial action even in cases where the published material does not actually contain SCI or classified information. See *Snepp v. United States*, supra.

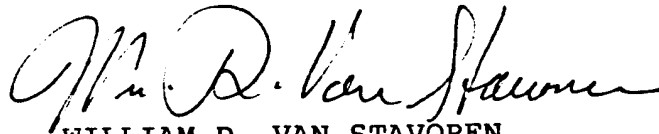
- f. The requirement to submit information or materials for prepublication review is not limited to any particular type of material or disclosure. Written materials include not only books but all other forms of written materials intended for public disclosure, such as (but not limited to) newspaper columns, magazine articles, letters to the editor, book reviews, pamphlets, and scholarly papers. Because fictional treatment may convey factual information, fiction is also covered if it is based upon or reflects information described in paragraph 5.d.
- g. Oral statements are also included when based upon written materials, such as an outline of the remarks. There is no requirement to prepare such material for prior review, however, unless there is reason to believe in advance that oral statements may contain SCI or other classified information. Thus, a person may participate in an oral presentation of information where there is no opportunity for prior preparation (e.g., news interview, panel discussion) unless there is reason to believe in advance that such oral expression may contain SCI or other classified information. This recognition of the problems with oral representations does not, of course, exempt present or former employees from liability for any unauthorized disclosures of SCI or classified information that may occur in the course of even extemporaneous oral expressions.
- h. Material that consists solely of personal views, opinions or judgments and does not contain or imply any statement of fact that would fall within the description in paragraph 5.d is not subject to the prepublication review requirement. For example, public speeches or publication of articles on such topics as proposed legislation or foreign policy do not require prepublication review as long as the material does not directly or implicitly constitute a statement of an informational nature that falls within paragraph 5.d. Of course, in some circumstances the expression of "opinion" may imply facts and thus be of such a character as to require prior review.
- i. Obviously, the purposes of prepublication review will be frustrated where the material in question already has been disseminated to unauthorized persons. Comparison of the material before and after the review would reveal which items of classified information, if any, had been deleted at the Department's request. Consequently, the Department will consider these obligations to have been breached in any case, whether or not the written material is subsequently

submitted to the Department for prepublication review, where it already has been circulated to publishers or reviewers or has otherwise been made available to unauthorized persons. While the Department reserves the right to review such material for purposes of mitigating damage that may result from the disclosure, such action shall not prevent the United States Government and the Department from pursuing all appropriate remedies available under law as a consequence of the failure to submit the materials for prior review and/or any unauthorized disclosure of SCI or classified information.

- j. Materials submitted for prepublication review will be reviewed solely for the purpose of identifying and preventing the disclosure of SCI and other classified information. This review will be conducted in an impartial manner without regard to whether the material is critical or favorable to the Department. No effort will be made to delete embarrassing or critical statements that are unclassified. Materials submitted to the Office of Intelligence Policy for review will be disseminated to other persons or agencies only to the extent necessary to identify classified information.
- k. The Counsel for Intelligence Policy will respond substantively to prepublication review requests within 30 working days. Priority shall be given to reviewing speeches, newspaper articles, and other materials that the author seeks to publish on an expedited basis. The Counsel's decisions may be appealed to the Deputy Attorney General, who will process appeals within 15 working days. The Deputy Attorney General's decision is final and not subject to further administrative appeal. Authors who are dissatisfied with the final administrative decision may obtain judicial review either by filing an action for declaratory relief or by giving the Department notice and a reasonable opportunity (30 working days) to file a civil action seeking a court order prohibiting disclosure. Of course, until any civil action is resolved in court, employees remain under an obligation not to disclose or publish information determined by the Government to be classified.
- l. Nothing in this order should be construed to alter or waive the Department's authority to seek any remedy available to it to prohibit or punish the unauthorized disclosure of classified information.

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- m. A former DOJ employee who subsequently receives a security clearance or SCI access approval from another department or agency is permitted to satisfy any obligation regarding prepublication review by making submissions to the department or agency that last granted the individual either a security clearance or an SCI access approval.
- n. The obligations described herein as applying to DOJ employees also apply with equal force to contractors who are authorized by the Department to have access to SCI or other classified information.



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